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EXAMINER

ASHLEY, BOYER DOLINGER

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 09/03/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/083,760

Applicant(s)

DIPALMA, ELAINE

Examiner

Boyer D. Ashley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: the sign "22" on page 5 is missing from the drawings. Appropriate correction is required.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "rivet head channel" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2 and 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 2, it is not clear what structure is being referring to by the "rivet head channel" in the phrase "said cover further maintains a rivet head channel configured to allow easy movement of said rivet head through said cover to said rivet head receiving

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slot". Is this the slide slots or the rivet head-receiving slot? How does the cover maintain a rivet head channel?

As to claim 4, the phrase "... rivet is constructed on metal" is confusing, in that, it is not clear how the rivet is constructed on metal. For the purposes of this office action it is assume that the applicant meant that the rivet is made of metal.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Linden, U.S. Patent 4,714,159.

Linden discloses the same invention as claimed including: a first and second blade portions (4, as shown in Figures1 and 3); a rivet (5/6a, see column 2, line 39) mounted through a pivot point of the first and second blade portion; a head portion (5) of the rivet is elevated with respect to the first blade portion; and a cover (3) capable for covering at least a portion of the first and second blade portions, wherein the cover includes a rivet receiving slot (6/8, see column 2, line 40) for frictionally engaging the head portion of the rivet such that the cover to held on the cutting device.

As to claim 2, the cover of the cutting device of Linden "maintains" a rivet head channel (9) configured to allow easy movement of the rivet head through the cover to

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the slot. The rivet head channel (9) allows the slot (6/8) to bend such that the rivet head is allowed to enter the slot.

As to claim 3, the cover to the cutting device of Linden is made of plastic (see column 2, line 28).

As to claim 6, the rivet of Linden includes a rivet back as shown in Figure 3.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Linden.

Linden discloses the invention substantially as claimed except for the rivet being constructed on metal. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the rivet from metal in order to provide inexpensive and long lasting hinge for the two blade portions, because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice and because Applicant has not disclosed that the use of metal for the rivet provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either material for the rivet because both allow for the blades to pivot relative to each other. Therefore, it would have been an obvious matter of design

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choice to modify Linden to obtain the invention as specific in claim 4. Moreover, the examiner takes official notice that it is old and well known in the art to use metal rivets for pivoting scissors for the purpose of providing durable and inexpensive hinges for pivoting scissors. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use metal rivets with the cutting device of Linden in order to provide a long-lasting and inexpensive pivoting connection.

9. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Melter et al., U.S. Patent 5,297,343, in view of Linden.

Melter et al. discloses the invention substantially as claimed, as shown in Figures 1 and 7, including first and second blade portions (22/26); a screw (16) mounted through a pivot point of the first and second blade portion; a head portion (96) of the screw is elevated with respect to the first blade portion; and a cover (80) capable for covering at least a portion of the first and second blade portions, wherein the cover includes a screw receiving slot (92/94) for frictionally engaging the head portion of the screw such that the cover to held on the cutting device.

The device of Melter et al., as stated above, discloses the claimed invention except that a screw fastener is used instead of rivet fastener. However, Linden, on column 2, lines 35-40, teaches that rivets and screws are equivalent structures known in the art. Therefore, because these two fastening means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute a rivet for the screw of Melter et al.

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As to claim 2, the cover of the modified cutting device of Melter et al. "maintains" a rivet head channel (92 or the slot beyond the circular slot 94 as shown in Figure 7) configured to allow easy movement of the rivet head through the cover to the slot. The rivet head channel (92 or 94) allows the slot to bend such that the rivet head is allowed to enter the slot.

As to claim 3, the modified device of Melter et al. discloses the invention substantially as claimed except for the cover being constructed of plastic. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the cover from plastic in order to provide inexpensive and easily manufactured cover for the two blade portions, because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice and because Applicant has not disclosed that the use of plastic for the cover provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either material for the cover because both allow for the blades to be protected as well as any user. Therefore, it would have been an obvious matter of design choice to modify the modified device of Melter et al. to obtain the invention as specific in claim 3. Moreover, the examiner takes official notice that it is old and well known in the art to use plastic covers for providing inexpensive protection from the points of the blades. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the

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invention was made to use a cover made from plastic with the modified cutting device of Melter et al. in order to provide inexpensive protection from the points of the blades.

As to claim 4, the modified device of Melter et al. discloses the invention substantially as claimed except for the rivet being constructed of metal. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the rivet from metal in order to provide inexpensive and long lasting hinge for the two blade portions, because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice and because Applicant has not disclosed that the use of metal for the rivet provides an advantage, is used for a particular purpose, or solves at stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either material for the rivet because both allow for the blades to pivot relative to each other. Therefore, it would have been an obvious matter of design choice to modify the modified device of Melter et al. to obtain the invention as specific in claim 4. Moreover, the examiner takes official notice that it is old and well known in the art to use metal rivets for pivoting scissors for the purpose of providing durable and inexpensive hinges for pivoting scissors. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use metal rivets with the modified cutting device of Melter et al. in order to provide a long-lasting and inexpensive pivoting connection.

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As to claim 5, the modified device of Melter et al. discloses the use of first and second side slits (see the cutouts on each side of the slots as shown in Figure 7) capable of allowing the cover to expand to allow the rivet head to enter the rivet head receiving slot.

As to claim 6, the modified device of Melter et al. includes a rivet back because all rivets have rivet backs.

As to claim 7, the modified device of Melter et al. includes a cover with a rivet back channel as shown in Figure 7 (there are two rivet slots).

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Boyer D. Ashley whose telephone number is 703-308-1845. The examiner can normally be reached on Monday-Thursday 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



Boyer D. Ashley
Primary Examiner
Art Unit 3724

BDA
8/27/03